

REMARKS

I. Introduction

Claims 13 to 25 are pending and being considered in the present application, since claims 1 to 12 were previously canceled.

II. Unity of Invention

The Examiner requires restriction to one of the following inventions:

- I: the species of Figure 1 corresponding to claims 13 to 15, 18, 19, and 21 to 24;
- II: the species of Figure 2, corresponding to claims 13, 14, and 16 to 24;
- III: the species of Figure 3, corresponding to claims 13 to 15, 18, 19, 22 to 23, and 25; and
- IV: the species of Figure 4, corresponding to claims 13, 14, 16 to 23, and 25.

In this regard, the Office Action asserts that “[t]he species listed above do not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same corresponding special technical features.” Office Action, p. 3.

However, the Office Action fails to establish lack of unity of invention since the Office Action has not identified any prior art considered with respect to any of the claims, has not indicated which features of the claims distinguish the claims over the prior art, and has not indicated whether a determination has been made that the claims of Groups I-IV do not share any special technical feature that distinguishes the claims over the prior art.

In this regard, it is noted that unlike U.S. restriction practice, whether each of different claims include technical features that the others of the claims do not have is irrelevant in a lack of unity analysis, except to the extent it is determined that the different claims do not share any of the same technical features. In order to makey this determination with respect to two claims ‘A’ and ‘B,’ it must be determined that none of the features which distinguish claim ‘A’ over the prior art are included in claim ‘B’ and also that none of the features which distinguish claim ‘B’ over the prior art are included in claim ‘A.’ “A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature.” M.P.E.P. § 1893.03(d) (emphasis added).

Therefore, a determination of lack of unity cannot be made without first considering the relevant prior art, except where there is no subject matter which is common to all of the claims. Where there is any subject matter which is common to all of the claims, unity of invention is necessarily present, unless it is determined that the common subject matter does not distinguish the claims over the prior art. As explained in M.P.E.P. § 1850(II), only the case of “independent claims to A + X, A + Y, X + Y can be said to lack unity *a priori* [*i.e.*, prior to considering the prior art,] as there is no subject matter common to all of the claims [since A is lacking in claim 3, X is lacking in claim 2, and Y is lacking in claim 1. However, in] the case of independent claims to A + X and A + Y, unity of invention is present *a priori* as A is common to both claims.” (Emphasis added.)

Moreover, “[u]nity of invention has to be considered in the first place only in relation to the independent claims . . . and not the dependent claims. . . . If the independent claims avoid the prior art . . . , no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention.” *Id.* (emphasis added).

In the present application, all of claims 14 to 25 ultimately depend from a single independent claim 13 so that unity of invention is therefore necessarily present a priori, i.e., prior to consideration of any of the relevant prior art. The Office Action has not identified any prior art that has been considered with respect to the claims. Specifically, the Office Action has not identified any prior art that renders the single independent claim 13 not novel and obvious. Unity of invention is therefore necessarily present since whichever feature might distinguish independent claim 13 over the prior art is present in all of the presently pending claims.

The Office Action therefore fails to establish lack of unity of invention.

While Applicants do not agree with the merits of this restriction requirement, since no comparison has apparently been made at all to the prior art from which to discern the features of each of the claims that distinguish the claims over the prior art, *Applicants elect with traverse (for the reason stated above) Group I, drawn to the species of Figure 1, which corresponds to claims 13 to 15, 18, 19, and 21 to 24.*

Applicants respectfully request an early and favorable action on the merits.

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Respectfully submitted,
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